

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

OLIN CORPORATION,)	
)	
Plaintiff,)	
v.)	Civil Action No. 84 CIV 1968 (JSR)
)	
LAMORAK INSURANCE COMPANY,)	
)	
)	
Defendant.)	
-----X		
LAMORAK INSURANCE COMPANY)	
f/k/a OneBeacon America Insurance Company)	
)	
Third-Party Plaintiff,)	
)	
v.)	
)	
CERTAIN UNDERWRITERS AT LLOYD’S,)	
LONDON and LONDON MARKET)	
INSURANCE COMPANIES, et al.)	
)	
Third-Party Defendants.)	

**DECLARATION OF RALPH J. LUONGO IN SUPPORT OF LAMORAK INSURANCE
COMPANY’S MOTION FOR SUMMARY JUDGMENT FOR RETURN OF SUMS PAID
FOR OLIN’S CRAB ORCHARD “PAST COSTS” AND DISMISSAL OF OLIN’S “CRAB
ORCHARD FUTURE COSTS” CLAIM**

I, Ralph J. Luongo, being of full age, hereby declare pursuant to 28 U.S.C. § 1746:

1. I am an attorney at law licensed to practice in the Commonwealth of Pennsylvania and admitted *pro hac vice* in the above-captioned action to practice before this Court.

2. I am a partner of the law firm Kennedys CMK, LLP, with offices at 1600 Market Street, Suite 1401, Philadelphia, Pennsylvania 19103 and 570 Lexington Avenue, 8th Floor, New York, NY 10022. Kennedys CMK, LLP has been retained by defendant Lamorak Insurance

Company (f/k/a OneBeacon America Insurance Company) (“Lamorak”) to represent it in this matter.

3. I submit this Declaration in support of Lamorak’s Motion for Summary Judgment for Return of Sums Paid for Olin’s Crab Orchard “Past Costs” and Dismissal of Olin’s “Crab Orchard Future Costs” Claim.

4. My statements in this Declaration are based upon my personal knowledge and also upon my review of documents from the files, pleadings and documents produced in this action.

5. Attached hereto as Exhibit A is a true and correct copy of the Settlement Agreement and Release between Olin and Century Indemnity Company and bearing Bates Numbers 2017OLINREMAND_00002149-2177.

6. Attached hereto as Exhibit B is a true and correct copy of the July 31, 2009 Confidential Settlement Agreement and Release between Olin and London Market Insurers and bearing Bates Numbers 2017OLINREMAND_00002231-2280.

7. Attached hereto as Exhibit C is a true and correct copy of the June 22, 2011 Confidential Agreement of Settlement, Compromise and Release between Olin and Continental Casualty Company and bearing Bates Numbers 2017OLINREMAND_00000247-270.

8. Attached hereto as Exhibit D is a true and correct copy of an excerpt of Olin’s Motion Concerning the Continuing Coverage Provision filed with the Federal Court on October 20, 2010, ECF No. 1437.

9. Attached hereto as Exhibit E are true and correct copies of the insurance policies issued to Olin by Lamorak’s predecessor Employers Commercial Union Insurance Company of America (“Lamorak Policies”): Policy No. KY-8057-011; Policy No. KY-8057-012; and Policy No. KY-8057-013.

10. The effect of Olin's previous settlements on the amounts Olin could recover from Lamorak was, by 2013, just one of several still-unresolved issues arising under Olin's Condition C allocation theory.

11. Attached hereto as Exhibit F is a true and correct copy of an excerpt of a transcript of proceedings regarding a conference held on January 9, 2013 before Judge Thomas P. Griesa, ECF No. 1657.

12. Olin's litigation of claims against Lamorak relating to the Five Sites was preceded by its litigation of claims relating to the "Big D" site (resolved by pretrial settlement in 2009) and the Morgan Hill site (resolved by settlement during trial in 2011).

13. Attached hereto as Exhibit G is a true and correct copy of Olin's Third Amended Complaint filed with the Federal Court on June 14, 2010, ECF No. 1403.

14. Attached hereto as Exhibit H is a true and correct copy of the Amended Rule 54(b) Judgment filed with the Federal Court on April 6, 2015, ECF No. 1819.

15. Attached hereto as Exhibit I is a true and correct copy of the Opinion and Order filed with the Federal Court on April 15, 2015, ECF No. 1820.

16. Attached hereto as Exhibit J is a true and correct copy of the Supersedeas Bond filed with the Federal Court on April 24, 2015, ECF No. 1822.

17. Attached hereto as Exhibit K is a true and correct copy of the Supersedeas Bond filed with the Federal Court on June 11, 2015, ECF No. 1834.

18. Attached hereto as Exhibit L is a true and correct copy of Lamorak's Notice of Motion for Leave to File a Third-Party Complaint for Indemnity and/or Equitable Contribution, and for Declaratory Judgment filed with the Federal Court on September 29, 2017, ECF No. 1990.

19. Attached hereto as Exhibit M is a true and correct copy of Lamorak's Memorandum in Support of Motion for Leave to File a Third-Party Complaint for Indemnity and/or Equitable Contribution, and for Declaratory Judgment filed with the Federal Court on September 29, 2017, ECF No. 1991.

20. Attached hereto as Exhibit N is a true and correct copy of the Order filed with the Federal Court on October 13, 2017, ECF No. 2000.

21. This Court made clear in conferences with counsel, including undersigned counsel, held prior to and after the remand that it expected the next period of litigation to be the last; all remaining Olin claims against Lamorak should be presented and would be resolved by the end of 2019, along with the issue on remand.

22. Attached hereto as Exhibit O is a true and correct copy of Olin's Fourth Amended Complaint filed with the Federal Court on October 16, 2017, ECF No. 2001.

23. Attached hereto as Exhibit P is a true and correct copy of Lamorak's Third-Party Complaint for Equitable Contribution and/or Indemnity, and for Declaratory Judgment filed with the Federal Court on October 19, 2017, ECF No. 2003.

24. Attached hereto as Exhibit Q is a true and correct copy of Lamorak's Complaint filed with the New York Supreme Court on October 19, 2017, NYSCEF Doc. No. 1.

25. Attached hereto as Exhibit R is a true and correct copy of the Civil Case Management Plan Regarding the Remanded Sites and All Remaining Sites filed with the Federal Court on October 12, 2017, ECF No. 1999.

26. Attached hereto as Exhibit S is a true and correct copy of Lamorak's Interrogatories and Requests for Production of Documents to Olin Relating to Remand Issues, dated October 16, 2017.

27. Attached hereto as Exhibit T is a true and correct copy of Lamorak's First Set of Requests for Production of Documents Relating to the Fourth Amended Complaint Sites, dated October 19, 2017.

28. Attached hereto as Exhibit U is a true and correct copy of Olin's Objections and Responses to Lamorak's Interrogatories and Requests for Production of Documents Relating to Remand Issues, dated November 2, 2017.

29. Attached hereto as Exhibit V is a true and correct copy of Olin's Rule 26(a)(1) Disclosures Regarding the Fourth Amended Complaint Sites, dated October 19, 2017.

30. Attached hereto as Exhibit W is a true and correct copy of Olin's Objections and Responses to Lamorak's First Set of Requests for Production of Documents Relating to the Fourth Amended Complaint Sites, dated November 20, 2017.

31. Not among the documents Olin produced to Lamorak were any documents "reflecting Olin's allocation to particular Sites, groups of sites or claims, or particular insurance policies of the funds demanded or received from any Settlement by any and all Insurers and any calculations supporting same" -- that is, the "Remand Issue," as expressed in Lamorak's October 16 Request No. 11.

32. Attached hereto as Exhibit X is a true and correct copy of the deposition of Stuart Roth, taken on August 20, 2020.

33. Olin produced no contemporaneous notes -- handwritten or otherwise -- in any of its document productions relating to its settlements. *See* Exhibit X, ; Exhibit KK.

34. Of the 1.2 million pages of documents produced by Olin in 2017-2018, not a single page reflected an allocation by Olin of any settlement monies, as demanded or once received from its insurers, to any of the Five Remand or Fifteen Remaining Sites.

35. Attached hereto as Exhibit Y is a true and correct copy of Lamorak's Notice of Deposition to Olin former General Counsel, George Pain, dated November 2, 2017.

36. Attached hereto as Exhibit Z is a true and correct copy of Lamorak's Notice of Deposition to Olin former Deputy General Counsel, Stuart Roth, dated November 2, 2017.

37. Attached hereto as Exhibit AA is a true and correct copy of Lamorak's 30(b)(6) Notice of Deposition dated November 2, 2017.

38. Attached hereto as Exhibit BB is a true and correct copy of Olin Corporation's Objections and Responses to Lamorak Insurance Company's Notice of Deposition of Olin dated November 29, 2017.

39. Attached hereto as Exhibit CC is a true and correct copy of a heavily redacted multi-page ledger produced by Olin and bearing Bates Numbers 2017OLINREMAND_00033554-74.

40. Attached hereto as Exhibit DD is electronic mail correspondence between Peter J. Brennan, Jenner & Block LLP, and Jerry Ronecker, Husch Blackwell and Elaine Whiteman Klinger and Ralph J. Luongo designating certain individuals to testify regarding certain topics contained in Lamorak's November 2, 2017 30(b)(6) Notice of Deposition, dated December 1, 2017.

41. Attached hereto as Exhibit EE is a true and correct copy of the deposition of Stuart Roth, taken on December 7, 2017.

42. Attached hereto as Exhibit FF is a true and correct copy of the Settlement Agreement and Mutual Release made as of September 18, 2008 between General Dynamics-OTS and Olin Corporation and bearing Bates Numbers 2020OLINCOS_0050959-60.

43. Attached hereto as Exhibit GG is the Distribution Agreement dated as of December 30, 1996, between Olin Corporation, a Virginia corporation ("Olin"), and Primex Technologies,

Inc., a Virginia corporation (“Primex”) and bearing Bates Numbers 2020OLINCOS_0043465-43495.

44. Attached hereto as Exhibit HH is the December 31, 1996 Assumption of Liabilities and Indemnity Agreement between Olin and Primex and bearing Bates Numbers 2020OLINCOS_0043447-43464.

45. Attached hereto as Exhibit II is the November 8, 2000 Agreement and Plan of Merger Among General Dynamics Corporation, Mars Acquisition Corporation and Primex Technologies, Inc. and bearing Bates Numbers GD-OTS_OLIN_LITIG_00000022-71.

46. Attached hereto as Exhibit JJ is a spreadsheet identifying costs incurred by Olin at Crab Orchard and bearing Bates Number 2020OLINCOS_0000001.

47. Attached hereto as Exhibit KK is a true and correct copy of the deposition of Elaine Mills, taken on August 18, 2020.

48. Attached hereto as Exhibit LL is a true and correct copy of letter dated August 18, 2004 from Del Stiltner Dameron (GD-OTS counsel) to George Pain (Olin counsel) and bearing Bates Numbers 2018OLINFACSITES_00138676-138678.

49. Attached hereto as Exhibit MM is a true and correct copy of letter dated March 5, 2005 from Del Stiltner Dameron to George Pain and bearing Bates Numbers 2020OLINCOS_0043880-0043881.

50. Attached hereto as Exhibit NN is a true and correct copy of the deposition of George Pain, taken on December 15, 2017.

51. Attached hereto as Exhibit OO is a true and correct copy of the Settlement Agreement and Mutual Release made as of December 4, 2009 between General Dynamics-OTS

and Olin Corporation and bearing Bates Numbers 2020OLINCOS_0039110-2020OLINCOS_0039116.

52. Attached hereto as Exhibit PP are true and correct copies of correspondence sent by Olin to Lamorak regarding the “Crab Orchard Future Costs” produced by Olin in this action bearing Bates Numbers 2020OLINCOS_0000451–453; 2020OLINCOS_0000588-592; 2020OLINCOS_0000610-614.

53. Attached hereto as Exhibit QQ is a true and correct copy of the deposition of Michael Mann, taken on December 19, 2017.

54. Attached hereto as Exhibit RR is a true and correct copy of the deposition of Graham Loxley, taken on September 10, 2020.

55. Attached hereto as Exhibit SS is a true and correct copy of the Declaration of Ralph J. Luongo in Support of Lamorak’s Motion for Summary Judgment filed with the Federal Court on January 22, 2018, ECF No. 2100.

56. Attached hereto as Exhibit TT is a true and correct copy of Lamorak’s Memorandum of Law in Support of Motion for Summary Judgment filed with the Federal Court on January 22, 2018, ECF No. 2095.

57. Attached hereto as Exhibit UU is a true and correct copy of Lamorak’s Local Rule 56.1 Statement of Undisputed Material Facts in Support of Lamorak’s Motion for Summary Judgment filed with the Federal Court on January 22, 2018, ECF No. 2096.

58. Attached hereto as Exhibit VV is a true and correct copy of Olin’s Memorandum of Law in Support of Olin’s Motion for Summary Judgment on the Amount of the Recalculated Judgments on the Five Remand Sites filed with the Federal Court on January 22, 2018, ECF No. 2091.

59. Attached hereto as Exhibit WW is a true and correct copy of Lamorak's Opposition to Olin's Motion for Summary Judgment on the Amount of the Recalculated Judgments on the Five Remand Sites filed with the Federal Court on February 2, 2018, ECF No. 2111.

60. Attached hereto as Exhibit XX is a true and correct copy of Olin's Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment on the Amount of the Recalculated Judgments on the Five Remand Sites filed with the Federal Court on January 22, 2018, ECF No. 2094.

61. Attached hereto as Exhibit YY is a true and correct copy of Lamorak's Response to Olin's Statement of Undisputed Material Facts and Counterstatement of Undisputed Material Facts Pursuant to Local Civil Rule 56.1 filed with the Federal Court on February 2, 2018, ECF No. 2112.

62. Attached hereto as Exhibit ZZ is a true and correct copy of Olin Costs Through December 2016, produced at the January 24, 2018 deposition of Curt Richards and marked as Exhibit 9.

63. Attached hereto as Exhibit AAA is a true and correct copy of the Opinion and Order filed with the Federal Court on July 17, 2018, ECF No. 2302.

64. Attached hereto as Exhibit BBB is a true and correct copy of the August 30, 2018 Settlement Agreement and Release between Olin and Lamorak.

65. Attached hereto as Exhibit CCC is a true and correct copy of the Order of Dismissal and Stay filed with the Federal Court on October 11, 2018, ECF No. 2376.

66. Attached hereto as Exhibit DDD is a true and correct copy of the Order filed with the Federal Court on April 1, 2020, ECF No. 2385.

67. In 2017-2018, Olin did not produce the 2008 and 2009 settlement documents entered into between Olin and GD-OTS establishing this alleged succession by GD-OTS to the Primex liabilities and insurance rights.

68. Lamorak searched for but found neither the Settlement Agreement and Mutual Release made as of September 18, 2008 between General Dynamics-OTS and Olin Corporation and bearing Bates Numbers 2020OLINCOS_0050959-60 (Exhibit FF) nor the Settlement Agreement and Mutual Release made as of December 4, 2009 between General Dynamics-OTS and Olin Corporation and bearing Bates Numbers 2020OLINCOS_0039110-2020OLINCOS_0039116 (Exhibit OO) -- or any other unredacted document relating or referring to them -- among the 1.2 million pages of documents Olin had produced in response to Lamorak's 2017-2018 discovery addressing the Remand Issue and the Fifteen Remaining Sites.

69. Attached hereto as Exhibit EEE is a true and correct copy of Olin's Objections and Responses to Lamorak's Amended Rule 30(b)(6) Notice of Deposition of Olin dated August 10, 2020.

70. Attached hereto as Exhibit FFF is a true and correct copy of electronic mail correspondence from Allison A. Torrence, Jenner & Block LLP, to counsel for Lamorak advising Olin's document production would be starting on December 1, 2017, dated December 1, 2017.

71. Attached hereto as Exhibit GGG is a true and correct copy of the deposition of George Pain, taken on August 18, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

KENNEDYS CMK, LLP

Dated: November 12, 2020

By: /s/ Ralph J. Luongo
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*Attorney for Defendant and Third-Party Plaintiff,
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Ralph J. Luongo's Declaration in Support of Motion for Summary Judgment for Return of Sums Paid for Olin's Crab Orchard "Past Costs" and Dismissal of Olin's "Crab Orchard Future Costs" Claim was served on the following counsel of record via electronic mail, this 12th day of November, 2020:

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Date: November 12, 2020

s/ Ralph J. Luongo